

Contract Clauses BI-101 through BI-128

CONTINUITY OF SERVICES (NOV 2004) (BI-101)

(a) The Contractor recognizes that the services under this contract are vital to the NAFI and must be continued without interruption and that, upon contract expiration, a successor, either the NAFI or another contractor, may continue them. The Contractor agrees to—

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice—

(1) Furnish phase-in, phase-out services for up to ____ (*include a period not to exceed 90 days*) after this contract expires, and

(2) Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and (profit) not to exceed a pro rata portion of the (profit) under this contract.

(End of clause)

BANKRUPTCY (NOV 2004) (BI-102)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government/NAFI contract numbers and contracting offices for all Government/NAFI contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

SUSPENSION OF WORK (NOV 2004) (BI-103)

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the NAFI.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified) an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date the final payment under the contract.

(End of clause)

CHANGES (NOV 2004) (BI-104)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the NAFI in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

ALTERNATE I

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

ALTERNATE II

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the NAFI, in accordance with the drawings, designs, or specifications.

- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

ALTERNATE III

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

(End of clause)

RESERVED (NOV 2004) (BI-105)

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (NOV 2004) (BI-106)

Any subcontractors and outside associates or consultants utilized by the Architect-Engineer in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Any substitution of such contractors, associates, or consultants will be subject to the prior approval of the Contracting Officer.

(End of clause)

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (NOV 2004) (BI-107)

(a) Definitions. As used in this clause—

"Commercial item," has the meaning contained in the clause *Definitions*.

"Subcontract," includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices, in a subcontract at any tier for commercial items or commercial components:

(1) _____, Equal Opportunity (E.O.11246);

(2) _____, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C.4212(a)); and

(3) _____, Affirmative Action for Workers with Disabilities (29 U.S.C.793).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

PROPERTY RECORDS (NOV 2004) (BI-108)

The NAFI shall maintain the NAFI's official property records in connection with NAFI property under this contract. Deleting the requirement for the Contractor to maintain such records hereby modifies the clause *NAFI Property*.

(End of clause)

NAFI PROPERTY (NOV 2004) (BI-109)

(a) The Contractor shall sign a receipt for any property furnished by the NAFI and upon expiration of this contract shall return such property to the NAFI in the same condition as when received, except for fair wear and tear.

(b) Such property will be supplied to the Contractor in a condition suitable for the intended use and in a timely manner.

(c) If property is received in a less than functional state or in a time frame which would delay Contractor's performance, the Contractor shall, upon receipt of property, notify the Contracting Officer, detailing the facts, and as directed by the Contracting Officer and at NAFI expense, either repair, modify, return or otherwise dispose of the property. In the case of an untimely delivery by the NAFI, the Contracting Officer shall make a determination of the delay, if any, caused by the NAFI, the contracting officer shall make an equitable adjustment in accordance with paragraph (c).

(d) The Contracting Officer shall, upon written notification from the Contractor of any such discrepancies, make an equitable adjustment from such expenses incurred by the contractor.

(e) After completion of the contract, if any such property is lost, damaged or destroyed by the Contractor, the NAFI shall be paid the cost of repairs of damages or the fair market value of the property as determined by the Contracting Officer.

(f) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the NAFI. The right to any equitable adjustment shall be the Contractor's exclusive remedy. The NAFI shall not be liable for breach of contract for—

- (1) Any delay in delivery of NAFI furnished property;
- (2) Delivery of NAFI furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of NAFI furnished property; or
- (4) Failure to repair or replace NAFI property for which the NAFI is responsible.

(End of clause)

RESERVED (NOV 2004) (BI-110)

COMMERCIAL WARRANTY (NOV 2004) (BI-111)

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and to not limit any rights afforded to the NAFI by any other clause of this contract.

(End of clause)

WARRANTY OF CONSTRUCTION (NOV 2004) (BI-112)

(a) In addition to any other warranties in this contract, the contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the NAFI takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the NAFI takes possession.

(c) The Contractor shall remedy at the Contractor's expense any damage to NAFI or Government owned or controlled real or personal property, when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discover of any failure, defect or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the NAFI shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the NAFI if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the NAFI, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the NAFI may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the NAFI nor for the repair of any damage that results from any defects, gross mistakes, or fraud.

(j) This warranty shall not limit the NAFI's rights under the Inspection of Construction clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

LIMITATION OF LIABILITY—SUPPLIES (NOV 2004) (BI-113)

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the NAFI (excluding the supplies delivered under this contract) that—

(1) Occurs after NAFI acceptance of the supplies delivered under this contract; and

(2) Results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the NAFI's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the NAFI through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the NAFI, to the extent of such insurance or reserve, for loss of or damage to property of the NAFI occurring after NAFI acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(End of clause)

LIMITATION OF LIABILITY—SERVICES (NOV 2004) (BI-114)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the NAFI that—

(1) Occurs after NAFI acceptance of services performed under this contract; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the NAFI's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the NAFI through the Contractor's performance of services

or furnishing of materials under this contract, the Contractor shall be liable to the NAFI, to the extent of such insurance or reserve, for loss of or damage to property of the NAFI occurring after NAFI acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of clause)

RESERVED (NOV 2004) (BI-115)

RESERVED (NOV 2004) (BI-116)

RESERVED (NOV 2004) (BI-117)

TERMINATION FOR CONVENIENCE (NOV 2004) (BI-118)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI, in accordance with AR 215-4. In the event of such termination, the Contractor shall immediately stop all terminated work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work on the terminated portion(s) of the contract. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the NAFI, using its standard record keeping system, have resulted from the termination. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(End of clause)

NO-FAULT TERMINATION (NOV 2004) (BI-119)

This contract may be terminated in whole or in part by either party upon ____ *(insert number)* days written notice to the other party.

(End of clause)

RESERVED (NOV 2004) (BI-120)

CLAUSES INCORPORATED BY REFERENCE (NOV 2004) (BI-121)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Full text is available online at www.armymwr.org (NAF Contracting).

(End of clause)

DEFAULT (FIXED-PRICE CONSTRUCTION) (NOV 2004) (BI-122)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will ensure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the NAFI may, by written notice to the Contractor, terminate the right to proceed with the work or the separable part of the work that has been delayed. In this event, the NAFI may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the NAFI resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the NAFI in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if:

(1) The delay in completing the work arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the NAFI and /or Government, in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the NAFI or with the government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination has been issued for convenience of the NAFI.

(d) The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

CONVICT LABOR (NOV 2004) (BI-123)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work-training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

ASSIGNMENT OF CLAIMS (NOV 2004) (BI-124)

The contractor cannot assign any right or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

(End of clause)

NONWAIVER OF DEFAULTS (NOV 2004) (BI-125)

Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself or such remedies as it may have for any breach or breaches of such terms and conditions.

(End of clause)

CHANGES—CONSTRUCTION (NOV 2004) (BI-126)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the general scope of this contract, including changes—

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the NAFI-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the NAFI is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the NAFI. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (NOV 2004) (BI-127)

(a) The Contractor shall comply with the following clauses that are incorporated by reference:

(1) The clauses listed implement provisions of law or Executive Order:

(i) Restrictions on Certain Foreign Purchases

(2) Listed below are additional clauses that apply:

(i) _____, Payments

(ii) _____, Discounts for Prompt Payment

(iii) _____, Prompt Payment.

- (iv) _____, Extras
- (v) _____, Assignment of Claims

(b) The Contractor shall comply with the following clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

- (i) _____, Walsh-Healey Public Contracts Act (41 U.S.C. 35-45)
- (ii) _____, Equal Opportunity (E.O. 11246)
- (iii) _____, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era
(38 U.S.C. 4212)
- (iv) _____, Affirmative Action for Workers with Disabilities (29 U.S.C. 793)
- (v) _____, Prohibition of Segregated Facilities (Applies when EEO clause is used)
- (vi) _____, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.)
- (vii) _____, Buy American Act--Balance of Payment Program--Supplies (41 U.S.C.

10a-10d)

(2) Listed below are additional clauses that may apply:

- (i) _____, Protecting the NAFI's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
- (ii) _____, Delivery of Excess Quantities.
- (iii) _____, Material Requirements.
- (iv) _____, Variation in Quantity
- (v) _____, Fair Labor Standards Act and Service Contract Act for Multiple Year and Option Contracts
- (vi) _____, Fair Labor Standards Act and Service Contract Act – Price Adjustment
- (vii) _____, Privacy Act Notification
- (viii) _____, Privacy Act
- (ix) _____, Hazardous Material Identification and Material Safety Data
- (x) _____, Refrigeration Equipment and Air Conditioners
- (xi) _____, Mandatory Information for Electronic Funds Transfer.
- (xii) _____, Limitation of Liability

(xiii)____, Limitation of Liability – Services

(xiv)____,Continuity of Services

(xv) _____, F.o.b. Origin.

(xvi) _____,F.o.b. Destination.

(c) Clauses incorporated by reference. This contract incorporates one or more clauses by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of the clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) Inspection/Acceptance. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The NAFI reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The NAFI has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The NAFI may reject nonconforming supplies with or without disposition instructions. The NAFI may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The NAFI shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. NAFI failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the NAFI, for nonconforming supplies. Inspections and tests by the NAFI do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(e) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the NAFI in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) Termination for the NAFI's convenience. The NAFI reserves the right to terminate this contract, in whole or in part, when it is in the best interest of the NAFI in accordance with AR 215-4. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the NAFI, using its standard record keeping system, have resulted from the termination. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) Warranty. The Contractor agrees that the supplies or services furnished under this contract

shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and to not limit any rights afforded to the NAFI by any other clause of this contract.

(End of clause)

**TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (CONSTRUCTION) (NOV 2004)
(BI-128)**

(a) The Contractor shall comply with the following clauses that are incorporated by reference:

(1) The clauses listed implement provisions of law or Executive Order:

(i) Restrictions on Certain Foreign Purchases

(2) Listed below are additional clauses that apply:

(i) _____, Prompt Payment for Construction Contracts

(ii) _____, Extras

(iii) _____, Assignment of Claims

(b) The Contractor shall comply with the following clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) _____, Walsh-Healey Public Contracts Act (41 U.S.C. 35-45)

(ii) _____, Equal Opportunity (E.O. 11246)

(iii) _____, Affirmative Action Compliance Requirements for Construction

(iv) _____, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era
(38 U.S.C. 4212)

(v) _____, Affirmative Action for Workers with Disabilities (29 U.S.C. 793)

(vi) _____, Prohibition of Segregated Facilities (Applies when EEO clause is used)

(vii) _____, Davis Bacon Act

(viii) _____, Withholding of Funds

(ix) _____, Payrolls and Basic Records

(x) _____, Apprentices and Trainees

(xi) _____, Compliance with Copeland Act Requirements

(xii) _____, Subcontracts (Labor Standards)

(xiii) _____, Labor Standards for Construction Work – Facilities Contracts

(xiv) _____, Contract Termination – Debarment

(xv)____, Compliance with Davis Bacon and Related Act Requirements

(xvi)____,Disputes Concerning Labor Standards

(xvii)____,Notice to the NAFI of Labor Disputes

(xviii)____,Certification of Eligibility

(2) Listed below are additional clauses that may apply:

(i) _____, Protecting the NAFI's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

(ii) _____, Hazardous Material Identification and Material Safety Data

(iii)_____, Waste Reduction Program

(iv)_____, Refrigeration Equipment and Air Conditioners

(v)_____, North Carolina State and Local Sales and Use Tax

(vi)_____, Mandatory Information for Electronic Funds Transfer

(vii)_____, Schedules for Construction Contracts

(viii)_____,PreConstruction Conference

(ix)_____, NAFI Property

(c) Clauses incorporated by reference. This contract incorporates one or more clauses by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of the clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) Excusable delays. The Contractor shall be liable for Default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the NAFI in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(e) Termination for the NAFI's convenience. The NAFI reserves the right to terminate this contract, in whole or in part, when it is in the best interest of the NAFI in accordance with AR 215-4. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the

percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the NAFI, using its standard record keeping system, have resulted from the termination. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(End of clause)